

Unofficial Draft Copy

As of: August 30, 2004 (3:05pm)

LC5008

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for qualifications for medical malpractice expert witnesses; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Medical malpractice expert witness qualifications. (1) A person may not testify as an expert witness on issues relating to negligence and standards of care and practice in an action on a malpractice claim, as defined in 27-6-103, for or against a health care provider, as defined in 27-6-103, unless the person:

(a) is licensed as a health care provider in at least one state and ordinarily treats the diagnosis or condition or provides the type of treatment that is the subject matter of the malpractice claim or is an instructor of students in an accredited health professional school or accredited residency or clinical research program relating to the diagnosis or condition or the type of treatment that is the subject matter of the malpractice claim; and

(b) shows by competent evidence that, as a result of education, training, knowledge, and experience in the evaluation, diagnosis, or treatment of the disease or injury that is the

1 subject matter of the malpractice claim against the health care
2 provider, the person is thoroughly familiar with the standards of
3 care and practice in the same or a similar community as they
4 related to the act or omission that is the subject matter of the
5 malpractice claim on the date of the incident upon which the
6 malpractice claim is based.

7 (2) If the malpractice claim involves treatment that is
8 recommended or provided by a physician as defined in 37-3-102, a
9 person may not testify as an expert witness with respect to
10 issues of negligence or standards of care and practice concerning
11 the treatment unless the person is also a physician.

12 (3) A person qualified as an expert in one medical specialty
13 or subspecialty is not qualified to testify with respect to a
14 malpractice claim against a health care provider in another
15 medical specialty or subspecialty unless, in addition to a
16 showing of substantial familiarity with applicable standards of
17 care and practice in accordance with subsection (1)(b), there is
18 a showing that the standards of care and practice in the two
19 specialty or subspecialty fields are substantially similar
20

21 NEW SECTION. **Section 2. Applicability.** [This act] applies
22 to causes of action that arise after [the effective date of this
23 act].
24

25 - END -

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